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VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TWA325
Washington, DC 20554

**Re: *Expanding Consumers' Video Navigation Choices*, MB Docket No. 16-42
 Commercial Availability of Navigation Devices, CS Docket No. 97-80
 Promoting the Availability of Diverse and Independent Sources of Video
 Programming, MB Docket No. 16-41**

Dear Ms. Dortch:

T-Mobile USA, Inc. (“T-Mobile”)¹ supports the Federal Communications Commission’s proposal to adopt rules that allow consumers to choose how to access their multichannel video programming.² T-Mobile is a pure-play mobile broadband provider unaffiliated with a multichannel video programming distributor (“MVPD”). Our focus on the consumer and our maverick status in the wireless industry allows us to play a uniquely disruptive role in bringing competition and innovation to market. In our view, the Commission can promote competition in both the wireless and video markets by fulfilling its obligation under section 629 of the Telecommunications Act of 1996 to allow for more consumer choice in video-navigation products than exists today.³

I. The FCC’s Proposals Would Reasonably Implement Section 629.

Section 629 directs the Commission to adopt “regulations to assure the commercial availability . . . [of] equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems” from providers not affiliated with the MVPD.⁴ Consistent with section 629, T-Mobile supports requiring MVPDs to:

¹ T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

² See *Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 31 FCC Rcd 1544 (2016) (“NPRM”).

³ See *id.* ¶ 11; 47 U.S.C. § 549.

⁴ 47 U.S.C. § 549.

- Offer consumers a free app to access all of the MVPD programming that the consumer has paid to receive;
- Provide the apps on widely deployed platforms on a reasonable and nondiscriminatory basis, including the Android and iOS operating systems used by most smartphones and tablets; and
- Allow consumers to search the linear and on-demand content of their pay-TV service alongside other video services accessible through the device.⁵

Consumers should be able to access the video programming they pay for and want using the devices they choose, especially when mobile video promises to become the next frontier in mobile broadband disruption.⁶

For the same reasons, MVPDs should not be permitted to discriminate against third-party video-navigation products on the platforms that the MVPDs provide to their subscribers. Instead, principles of non-discrimination and non-interference should apply to prevent MVPDs from maintaining a closed system of video navigation. In other words, just as the Commission's proposed rules allow consumers to have a choice in video-navigation apps on third-party devices, consumers should be able to choose from a variety of video-navigation products within the MVPDs' video-navigation platforms.

II. Mobile Video is the Number One Way Consumers Use Mobile Data and is the Next Frontier in Mobile Broadband Disruption

Mobile data is now mostly video, and this trend will continue. Consumers use nearly two-and-a-half times more of their wireless data for mobile video today than they did just two years ago.⁷ Mobile video traffic is projected to increase by 11 times between 2015 and 2020 and account for 75 percent of the world's mobile data traffic by the end of that period.⁸ Removing artificial constraints on the types of video-navigation device platforms available in the market would reinforce the trend toward offering consumers more options for accessing the video content of their choice.

Video-navigation devices connect consumers and video-content providers with one another. Like other multi-sided platforms, video-navigation devices create value by simplifying

⁵ *Chairman Wheeler's Proposal to Increase Consumer Choice & Innovation in the Video Marketplace*, Fact Sheet, at 1 (Sept. 8, 2016), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0908/DOC-341152A1.pdf ("Set-Top Box Fact Sheet").

⁶ See Reply Comments of T-Mobile, MB Docket No. 16-41 (filed Apr. 19, 2016) ("T-Mobile *Independent Programming NOI* Reply Comments"); *Promoting the Availability of Diverse and Independent Sources of Programming*, Notice of Inquiry, 31 FCC Rcd. 1610 (2016).

⁷ See Letter from Kathleen O'Brien Ham, Senior Vice President, Government Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 15-105, GN Docket Nos. 12-268, 14-28, and 14-177, IB Docket Nos. 15-256 and 97-95, RM-11664, WT Docket No. 10-112, at 2 (filed June 23, 2016).

⁸ See CISCO, *Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2015-2020 White Paper* at 3 (2016), <http://bit.ly/1W26UQo> ("Cisco *Visual Networking Index White Paper*").

interactions between the two sides in ways that make both sides better off.⁹ Competitive video-navigation devices have the potential to reduce the transaction costs associated with accessing video programming, but offer just one of many potential options for achieving these efficiencies. Streaming devices, such as Chromecast and Roku, perform the same function by offering access to programming in a single place and on an easy-to-use platform. And mobile broadband services, such as those provided by T-Mobile, can likewise reduce friction between consumers who want to acquire content and video-content providers who want to provide it.¹⁰

But the MVPDs' multi-sided platforms differ from those of the other providers because MVPDs can exercise considerable control over where and how consumers are able to access the video content to which they subscribe. MVPDs currently face few, if any, meaningful constraints in their provision of video-navigation services. As the FCC explained, "almost all consumers" have only one source for access to the multichannel video programming to which they subscribe: they must either lease a set-top box from their MVPD or use its proprietary app.¹¹ This limited scope of choice means that MVPDs can determine whether their customers' video content is available on a particular mobile device or platform. At the same time, the largest MVPDs can also exercise considerable control over video-content because several of the largest MVPDs either control video-content providers¹² or have negotiated various types of video-distribution restrictions as a condition to offering the providers access to the MVPDs' large base of video consumers.¹³

MVPDs also possess control over consumers' viewing experiences.¹⁴ Although a number of MVPDs have deployed apps that enable mobile devices to perform navigation functions, the apps typically limit which programming their customers can access, how their customers navigate to the programming, and the integration of certain complementary features and services.¹⁵ The MVPDs' existing apps "do not allow consumers to search across MVPD and

⁹ David S. Evans & Richard Schmalensee, *The Antitrust Analysis of Multi-Sided Platform Businesses* at 2, Coase-Sandor Institute for Law & Economics Working Paper No. 623 (2012), <http://bit.ly/2d1aGhS> ("*Analysis of Multi-Sided Platforms*") ("Multi-sided platforms create value by bringing two or more different types of economic agents together and facilitating interactions between them that make both agents better off.").

¹⁰ Open Table is another example of a multi-sided platform. It brings together restaurants and diners in a way that reduces the transaction costs associated with making reservations over the phone. *See id.* at 4-5.

¹¹ *NPRM* ¶ 13 (observing also that "the vast majority of MVPD subscribers lease boxes from their MVPD").

¹² *See, e.g., Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Seventeenth Report, 31 FCC Rcd 4472 ¶ 21 (MB 2016) ("*Seventeenth Competition Report*") (explaining that common ownership or entities that deliver and supply programming "may have implications for competition and programming diversity in the MVPD market").

¹³ Two types of provisions that can make it difficult for mobile and over-the-top providers to gain access to video programming are alternative distribution method ("ADM") and most favored nations ("MFN") provisions. *See, e.g., T-Mobile Independent Programming NOI* Reply Comments at 3-6.

¹⁴ *See, e.g., Comments of Public Knowledge*, MB Docket No. 16-42, at 22-29 (filed Apr. 22, 2016) ("PK Comments"). Although the FCC has found that cable providers face effective competition in video distribution from DBS providers, the video distribution market remains highly regulated because of the extensive market power of most of the principle players. *See, e.g., Seventeenth Competition Report* ¶¶ 24-25.

¹⁵ *See Reply Comments of the Consumer Video Choice Coalition*, MB Docket 16-42, at 19 (filed May 23, 2016) ("CVCC Reply Comments") (citing Letter from Lawrence E. Strickling, Assistant Secretary for Communications

OTT content sources or locally record programming for later viewing, are not portable across different MVPDs, and would not work on another provider's network if a consumer switches," as the Consumer Video Choice Coalition explained.¹⁶

Arrangements between retail navigation device developers and MVPDs to provide access to the MVPDs' programming, which typically take the form of proprietary apps, are "a step in the right direction" but "do not always provide access to all of the programming that a subscriber pays to access, and may limit features like recording."¹⁷ These arrangements increase consumers' options, but, as the Commission has noted, the relationships "are purely at the discretion of the MVPD and, to date, have only provided access to the MVPD's user interface rather than that of the competitive device."¹⁸ MVPDs have also imposed cumbersome authentication and periodic re-authentication requirements on stand-alone TV Everywhere apps that content-providers produce (*e.g.*, the Showtime, Disney, or HBO Now apps).¹⁹ These practices have observable consequences and offer few, if any, benefit to consumers.

MVPDs have strong incentives to retain control over where and how consumers access video programming. The fees for leasing set-top boxes are a significant source of revenue for MVPDs. The FCC estimates that the set-top box rental market is worth nearly \$20 billion per year and that the average household spends more than \$231 per year on set-top box rental fees.²⁰ Further, MVPDs are able to retain valuable insight into consumers' consumption preferences and patterns²¹ while cumbersome authentication requirements limit the content-providers' ability to develop a direct relationship with their viewers.

These types of imbalances have allowed the largest of the MVPDs to establish multi-sided platforms that act as an anchor on the demand for mobile video services because the MVPDs typically permit consumers to access the content they have purchased only on certain devices and through certain services. These imbalances also threaten to allow MVPDs to extend their market power from the set-top box environment to smartphones, tablets, and other mobile devices.

This situation has created an asymmetrical marketplace where MVPDs have no barriers to developing applications and services that can be deployed on mobile broadband networks for

and Information and Administrator, National Telecommunications and Information Administration, U.S. Dept. of Commerce, to Tom Wheeler, Chairman, FCC, MB Docket No. 16-42, at 3 (Apr. 14, 2016)). *See also* Comments of the Computer & Communications Industry Assoc., MB Docket No. 16-42, at 10 (filed Apr. 22, 2016); PK Comments at 21.

¹⁶ CVCC Reply Comments at 19.

¹⁷ *See, e.g.*, *NPRM* ¶16 (footnote omitted).

¹⁸ *Id.*

¹⁹ *See, e.g.*, *Seventeenth Competition Report* ¶ 64 (finding that TV Everywhere usage "is well behind the largest [online video distributors] in terms of user numbers" and suggesting that the lack of growth may be due to difficult sign-in procedures); PK Comments at 26-28.

²⁰ *See NPRM* ¶13 (citing Press Release, Sen. Edward Markey, Markey, Blumenthal Decry Lack of Choice, Competition in Pay-TV Video Box Marketplace (July 30, 2015), <http://bit.ly/2db5yXk>).

²¹ *See* CVCC Reply Comments at 61 (citing PK Comments at 30-32; Comments of TiVo Inc., MB Docket No. 16-62, CS Docket No. 97-80, at 29-30 (filed Apr. 22, 2016)).

customers that want to watch video everywhere. By contrast, mobile-only providers like T-Mobile are currently locked out of the tools they need to convert devices into powerful alternatives to the MVPD controlled set-top box. Continued asymmetric competition will impede the growth of mobile video. Because multi-sided platforms “do not fit neatly into the standard approaches for assessing market definition and market power,” the Commission needs to act decisively to promote platform innovation and consumer choice in video-navigation devices.²²

III. The FCC Can Increase Consumer Choice and Reduce Friction in Connecting Consumers and Producers of Video Content by Requiring MVPDs to Make Video Programming Available on All Widely Used Platforms.

The Commission should fulfill its statutory duty by adopting rules that encourage competition in the market for video-navigation equipment.²³ Specifically, it should require MVPDs to offer their customers free apps that can access all of the programming those customers have paid to receive.²⁴ The Commission should also require MVPDs to provide these apps for all widely distributed platforms, including the Android and iOS operating systems used by most smartphones and tablets. These apps should allow consumers to search their pay-TV service content (both linear and on-demand) alongside other video services that are accessible on a device and without discrimination.²⁵ The Commission should also apply the principles of non-discrimination and non-interference to the process of placing an app on the MVPDs’ proprietary video-navigation systems. Access to the MVPDs’ video navigation systems should be as readily available as access to third-party navigation systems.

These requirements would help T-Mobile better meet consumers’ demand for access to video content on an “any time, any place” basis. These requirements would also make finding the right TV show or movie far easier by allowing a “universal” or “integrated” search that considers multiple free-standing platforms, such as Netflix, Hulu, and the MVPDs’ channels, and limit access to a rich array of video content as a barrier to wireless broadband investment and growth. Greater demand for mobile video would increase demand for mobile broadband capacity, which would encourage investment in mobile broadband networks and the development of 5G services.

The concerns raised by parties throughout this proceeding have been largely addressed by revisions to the FCC’s proposed rules. For example, allowing MVPDs to control their own apps should ensure that copyright and licensing agreements remain intact.²⁶ Allowing MVPDs such end-to-end oversight over video programming should also allow video content providers to continue to be able to negotiate agreements with MVPDs that govern how their programming is presented within the MVPDs’ apps.²⁷ And requiring MVPDs to make the apps available on “all

²² *Analysis of Multi-sided Platforms* at 22.

²³ *See* 47 U.S.C. § 549.

²⁴ *See Set-Top Box Fact Sheet* at 1.

²⁵ *See id.*

²⁶ *See id.*

²⁷ *See id.*

widely deployed platforms” should eliminate concerns that the FCC is selecting a *de facto* standard and inhibiting innovation or product differentiation.²⁸

By favoring an open app environment, rather than a closed proprietary one as originally proposed by the MVPDs, the FCC will foster innovation on both the hardware and software side, allowing consumers more choice for their video-navigation devices. Just as competition and innovation moved us from the black rotary dial phone of the past to the smartphones of today, Commission action to promote the availability of competitive video-navigation devices will lead to the same wave of competition and innovation, bringing a more exciting future for video consumers. The Commission can help make this future a reality by ensuring that MVPDs offer their apps on widely available platforms, including the Android, iOS, and other operating systems used by most smartphones and tablets, and by applying the principles of non-discrimination and non-interference to third-party developers that seek access to MVPD-controlled video-navigation platforms.

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We will file an electronic copy of this letter with the Commission. Please direct any questions concerning this filing to me.

Respectfully submitted,

/s/ Kathleen O'Brien Ham

Kathleen O'Brien Ham
Senior Vice President, Government Affairs

²⁸ See *id.*